

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION

Complainant,

vs.

CLARK COUNTY SCHOOL DISTRICT

Respondents,

ITEM NO. 787

CASE NO. A1-046073

ORDER

For Complainant: Education Support Employees Association and their attorney Sandra G. Lawrence, Esq.

For Respondents: Clark County School District and their attorney Jon M. Okazaki, Esq.

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), on May 8, 2013 for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act"); NAC Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's open meeting laws. The Board held a hearing in this case on March 13, 2013. The parties submitted written closing statements on April 26, 2013.

Complainant Education Support Employees Association ("Association") alleges that Respondent Clark County School District ("CCSD") violated the Act's good faith bargaining requirements by unilaterally retiring a number of positions that had been classified as Title I, Level IV positions and by sending notice of that fact directly to the employees represented by the Association.

The Association and CCSD are parties to a collective bargaining agreement entered into on December 8, 2011 and which by its terms extends through June 30, 2014. The agreement includes an Appendix C, which lists employee positions that are within the bargaining unit and their corresponding pay grades. This Appendix C included the Title I, Level IV positions which

1 are at issue in this case. Testimony at the hearing established that at the time, some of these
2 positions were filled and that other employees who were seeking promotions to these positions
3 were placed in a qualified service pool maintained by CCSD, from which the promotions would
4 be made. The evidence at the hearing established that these Title I, Level IV positions had a
5 higher rate of pay than did Level III positions.

6 On March 8, 2012, less than three months after entering into the collective bargaining
7 agreement, CCSD notified employees in the qualified selection pool that certain Title I, Level IV
8 positions had been retired and that employees would be removed from the qualified selection
9 pool for those positions, although they would be placed in a qualified selection pool for Level III
10 positions. The affected positions were: Title I In-House Suspension Teacher Assistant IV, Title I
11 Instructional Assistant IV (Least Restrictive Environment), Title I Instructional Assistant IV
12 (Physical Education), Title I Instructional Assistant IV (S-W), Title I Library Assistant IV, Title
13 I Sign Language Aide IV, Title I Teacher/Family Assistant IV (S-W), Title I Teacher/Family
14 Assistant IV (Bilingual), Title I Instructional Assistant IV (Bilingual) and Title I Specialized
15 Program Teacher Assistant IV. We refer to these positions collectively as "the positions." For
16 each of these positions, there are also similar position classifications at Levels I, II and III, which
17 carry lower wage rates than do Level IV positions. CCSD did allow employees that were
18 currently in affected Level IV positions to continue in their current position indefinitely, but
19 testimony at the hearing established that if an employee currently in a Level IV position were to
20 leave that position the employee would not be able to return to the position at Level IV and
21 would instead be returned at Level III.

22 The Association charges that by retiring the positions, CCSD unilaterally changed the
23 wage rate for employees in its bargaining unit owing the lower wage rate associated with Level
24 III as opposed to Level IV positions, and also unilaterally changed the method to classify
25 employees in the bargaining unit. The Association argues that these changes involve mandatory
26 subjects of bargaining under NRS 288.150(2)(a) and (k).

27 CCSD defends its actions by asserting that the decision to retire the positions is really a
28 decision not to hire employees into the positions which is reserved as a management right under

1 NRS 288.150(3)(a). The Board agrees with CCSD that its actions fall within the protected
2 management rights of NRS 288.150(3)(a) and that therefore no prohibited labor practice has
3 occurred.

4 NRS 288.150(2) does not expressly list the retirement of positions as a mandatory subject
5 of bargaining. The Association did argue that the retirement of the positions was significantly
6 related to NRS 288.150(2)(a) and (k). A topic that is not expressly listed in NRS 288.150(2) but
7 which is significantly related to an enumerated subject under subsection 2 may still be
8 considered to be a mandatory subject of bargaining. Truckee Meadows Fire Protection Dist. v.
9 International Association of Fire Fighters, Local 2487, 109 Nev. 367, 849 P.2d 343 (1993).
10 However, in this case the Board but did not see sufficient evidence to show that retiring of
11 unoccupied positions qualified as a mandatory subject under NRS 288.150(2)(a).

12 Nor do we find that the retirement of the positions is a mandatory subject of bargaining
13 under NRS 288.150(2)(k). The Association cites to prior decisions of this Board where we have
14 held that the method used to classify employees is invoked where an employer changes an
15 employee's position and assigns the employee new duties which were indicative of a confidential
16 employee, International Association of Firefighters Local 731 v. City of Reno, Item No. 370,
17 EMRB Case No. A1-045573 (1996), and that that it is invoked where incumbent employees are
18 reduced in rank and pay grade. Las Vegas Police Protective Association v. City of Las Vegas,
19 Item No. 248, EMRB Case No. A1-045461 (1990). However, the evidence indicated that neither
20 of these circumstances were present in this case. CCSD did not assign incumbent employees new
21 duties, did not transfer the work performed by the affected positions out of the bargaining unit,
22 and did not take any action to reduce the level or compensation to the incumbent employees.

23 NRS 288.150(3) lists subjects that are reserved to management without negotiation and
24 includes "the right to hire." NRS 288.150(3)(a). The evidence presented at the hearing indicates
25 that CCSD's actions are hiring decisions. Notably, the evidence showed that CCSD was not
26 removing any incumbents from the positions, and that the incumbent employees are allowed to
27 continue in the positions until they voluntarily leave those positions or leave employment with
28 CCSD. This action, which does not affect incumbent employees, is in-line with CCSD's

1 characterization of its actions as a decision not to hire any more employees into the Title I Level
2 IV positions. The consequence that should an incumbent employee voluntarily leave a Title I
3 Level IV position they would not be hired back into that position at Level IV is also consistent
4 with CCSD's actions as a hiring decision as opposed to a decision that affects a mandatory
5 subject of bargaining because CCSD in doing so is not forcing any incumbent employee out,
6 they are instead closing the avenue for employees who do not currently hold a Level IV position
7 to be hired into a Level IV position. Evidence was presented that CCSD no longer had need for
8 the affected Title I level IV positions and did not intend to hire into those positions. Therefore
9 the Board concludes that CCSD's actions in this case concern management rights under NRS
10 288.150(3)(a) and in particular the right to hire.

11 Nor was the evidence sufficient in our mind to demonstrate that CCSD's actions rose to
12 the level of bad faith bargaining. The mere fact that CCSD announced the retirement of the
13 positions three months after executing a new agreement, without more, does not show that CCSD
14 acted in bad faith when it negotiated the current agreement with the Association. Nor does the
15 evidence presented at the hearing indicate that CCSD's actions reasonably tended to interfere
16 with the employees' protected rights under the Act.

17 Having considered the foregoing, and good cause appearing therefore the Board now
18 hereby finds and concludes as follows:

19 **FINDINGS OF FACT**

20 1. Education Support Employees Association and Clark County School District are parties
21 to a collective bargaining agreement which was entered into on December 8, 2011 and runs
22 through June 30, 2014.

23 2. The collective bargaining agreement includes Appendix C which lists includes the Title I
24 Level IV positions affected in this matter as positions within the bargaining unit represented by
25 the Association.

26 3. The affected positions in this matter are: Title I In-House Suspension Teacher Assistant
27 IV, Title I Instructional Assistant IV (Least Restrictive Environment), Title I Instructional
28 Assistant IV (Physical Education), Title I Instructional Assistant IV (S-W), Title I Library

Assistant IV, Title I Sign Language Aide IV, Title I Teacher/Family Assistant IV (S-W), Title I Teacher/Family Assistant IV (Bilingual), Title I Instructional Assistant IV (Bilingual) and Title I Specialized Program Teacher Assistant IV.

4. For the affected positions, there are other positions within the same classification, but at a lower level (Level I, II and III).

5. The corresponding Level I, II and III positions carry a lower rate of compensation than do the affected Level IV positions.

6. On March 8, 2012 CCSD notified employees who were in the qualified selection pool for the affected positions that the positions were being retired and that they would be placed in the qualified selection pool for the applicable position at Level III.

7. CCSD's actions do not affect incumbent employees who held a Title I Level IV position as of March 8, 2012 and who may continue in those positions until they voluntarily leave the position or leave employment with CCSD.

8. CCSD did not remove the work of the affected Title I Level IV positions out of the Association's bargaining unit.

9. CCSD's decision to retire the affected positions is a decision not to make additional hires into those positions.

10. If any of the foregoing findings is more appropriately construed as a conclusion of law, it may be so construed.

CONCLUSIONS OF LAW

1. The Board has exclusive jurisdiction over complaints concerning the interpretation of, or performance under the Act.

2. The complaint filed by the Association is within the exclusive jurisdiction of this Board.

3. CCSD's decision to retire the affected positions is not expressly listed as a mandatory subject of bargaining under NRS 288.150(2).

4. The evidence at the hearing did not establish that CCSD's decision to retire the affected positions is significantly related to salary, wages or other forms of direct monetary compensation under NRS 288.150(2)(a).

1 5. The evidence at the hearing did not establish that CCSD's decision to retire the affected
2 positions is significantly related to the method used to classify employees in the bargaining unit
3 under NRS 288.150(2)(k).

4 6. The decision to hire, or not to hire, is a reserved a management right without negotiation
5 under NRS 288.150(3)(a).

6 7. CCSD's decision to retire the affected position is a decision not to hire under NRS
7 288.150(3)(a).

8 8. CCSD was not required to negotiate the decision to retire the affected positions with the
9 Association.

10 9. The fact that CCSD retired the affected positions three months after entering into the
11 collective bargaining agreement is not sufficient to show that CCSD engaged in bad faith
12 bargaining.

13 10. The evidence presented at the hearing was not sufficient to show that CCSD had
14 interfered with a protected right or attempted to dominate or interfere with the administration of
15 the Association.

16 11. An award of costs pursuant to NRS 288.110(6) is not warranted in this case.

17 12. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it
18 may be so construed.

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It is further ordered that each party shall bear its own costs incurred herein.

**LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD**

mpc

BY: Philip E. Turner

PHILIP E. LARSON, Vice-Chairman

London Masters

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NOTICE OF ENTRY OF ORDER

12 To: Education Support Employees Association and their attorney Sandra G. Lawrence, Esq.

13 To: Clark County School District and their attorney Jon M. Okazaki, Esq.

14 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
15 May 21, 2013.

16 A copy of said order is attached hereto.

17 DATED this 21st day of May, 2013.

18 LOCAL GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

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21 BY


JOYCE A. HOLTZ, Executive Assistant
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 21st day of May, 2013, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Sandra G. Lawrence, Esq.
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JOYCE HOLTZ, Executive Assistant